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10/041,839	10/22/2001	Glen J. Anderson	P1840US00	5510

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EXAMINER

STRANGE, AARON N

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 07/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/041,839

Applicant(s)

ANDERSON, GLEN J.

Examiner

Aaron Strange

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement:

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 5/3/2005 have been fully considered but they are not persuasive.
2. With regard to claims 1 and 13, and Applicant's assertion that McCarthy does not disclose "determining at least one content characteristic common to at least the first user and the second user based on the first user profile and the second user profile", the Examiner respectfully disagrees. As discussed in the Office action of 2/17/2005, McCarthy discloses determining the most preferred musical genre(s) of the users. The most preferred musical genre is the genre with the highest group preference value, which is calculated from the weights in the user profiles (Col 22, Lines 65-66 and Col 23, Lines 18-39). The most preferred musical genre is a content characteristic common to the users.
3. With regard to claims 9, 11, 20, 24, 32, 33, and 35, and Applicant's assertion that Yashushi "does not teach or suggest to detect the person's orientation", the Examiner respectfully disagrees. Determining the position of a person with respect to a device meets the limitation of "establishing an orientation of the first user and second user with regards to a first device and a second device".

The American Heritage College Dictionary defined "orientation" as at least "The

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act of orienting of the state of being oriented". It further defines orient(ed) as at least "To align of position with respect to a point or system of reference". In the present case, Yashushi discloses determining the position of a person relative to a point of reference (loudspeaker). Since Applicant does not provide an explicit, special definition of "orientation" in the specification, the term is given its plain meaning in the art.

4. Applicant's arguments with respect to claims 10,11,20-23, and 32-34 fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Applicant merely alleges that McCarthy combined with Yashushi/Bharat fails to disclose or suggests the elements of the above claims.

5. With regard to claim 12, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

6. With regard to claim 12, and Applicant's assertion that Sainton does not teach "the third user not having a user profile", the Examiner respectfully disagrees. Applicant is reminded that the rejection of claim 12 is based on the combination of McCarthy and

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Sainton. It is apparent that a new user does not have a user profile prior to joining the fitness center disclosed by McCarthy. Sainton teaches generating a default profile for assignment to new users, who may then customize the profile as they see fit. The new users (third user) does not have a user profile in either McCarthy or Sainton.

7. With further regard to claim 12, and Applicant's assertion that "it seems unlikely that any particular user would have encountered the 'large number of users' mentioned by Sainton", it is unclear how the number of users encountered by a particular user is relevant. The default profile is generated by the system based on the preferences of a large number of users, and the system will encounter a large number of users over time.

8. Applicant's arguments with respect to claims 25 fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. Applicant merely alleges that McCarthy combined with Yashusi and Bharat fails to disclose or suggests the elements of claim 25.

### ***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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10. Claims 10, 22, and 34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claim 10 recites the limitation "outputting the content output for the first user" in lines 6-7. There is insufficient antecedent basis for this limitation in the claim. The Examiner recommends that the claim be amended to recite "outputting the output content at the second location", or a similar recitation, to clarify that the same "output content" that was being outputted at the first location will start being output at the second location when the user moves to the second location.

12. Claims 22 and 34 recite a similar recitation to claim 10, and are rejected under the same rationale.

### ***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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14. Claims 1-8, 13-19, and 26-31 are rejected under 35 U.S.C. 102(e) as being anticipated by McCarthy et al. (US 6,498,955).

15. With regard to claim 1, McCarthy discloses a method for providing content, comprising: identifying a first user profile corresponding to a first user and a second user profile corresponding to a second user (each user has a profile)(Col 22, Line 61 to Col 23, Line 7), the user profiles containing at least one content characteristic for a respective user (musical preference)(Col 22, Lines 65-66); determining at least one content characteristic common to at least the first user and the second user based on the first user profile and the second user profile (most preferred musical genres)(Col 23, Lines 18-27); and outputting content including the determined common characteristic to the first user and the second user (play preferred station)(Col 23, Lines 40-52).

16. With regard to claim 2, McCarthy further discloses detecting a presence of at least one of the first user and the second user in a location (users log-in) (Col 23, Lines 12-17).

17. With regard to claim 3, McCarthy further discloses identifying a third user profile corresponding to a third user (multiple users may be present)(Col 22, Line 61 to Col 23, Line 7) and outputting content including the determined common characteristic to the third user (Col 23, Lines 4-52).

18. With regard to claim 4, McCarthy further discloses that the identified user profiles are at least one of: stored in a centralized database (Col 22, Line 61 to Col 23, Line 7) and received from the users (Col 22, Lines 65-66).

19. With regard to claim 5, McCarthy further discloses that the content characteristic includes at least one of: style of content (preferred musical genre)(Col 22, Lines 65-66), content author and content performer.

20. With regard to claim 6, McCarthy further discloses that the content characteristic includes at least one of: output mode of content (musical genre) (Col 3, Lines 61-67 and Col 22, Lines 65-66) and content playing device.

21. With regard to claim 7, McCarthy further discloses that the content includes at least one of: audio data suitable for being output to a user (Col 22, Lines 55-57); visual data including at least one of graphics, pictures and surface covering appearance; aroma; ambiance lighting; temperature; and airflow.

22. With regard to claim 8, McCarthy further discloses establishing a time including at least one of time of day (90 minutes after member entered)(Col 24, Lines 32-39), time of week, time of month and time of year, wherein the established time is utilized in conjunction with the user profile for determining a common content characteristic.



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23. With regard to claims 13 and 26, McCarthy discloses a system and method for providing content based on user preferences, comprising: detecting a plurality of users at a location (users log-in) (Col 23, Lines 12-17); identifying user profiles corresponding to at least a portion of the plurality of users (each user has a profile)(Col 22, Line 61 to Col 23, Line 7); determining at least one content characteristic common to the identified user profiles (most preferred musical genres)(Col 23, Lines 18-27); and outputting content including the determined common characteristic at the location (play preferred station)(Col 23, Lines 40-52).

24. With regard to claim 14, McCarthy further discloses that determining includes determining if the content characteristic is common to a preponderance of the identified user profiles (all profiles are considered) (Col 23, Lines 18-27).

25. Claims 15-19 are rejected for the reasons cited above for claims 4-8, since they recite substantially identical subject matter.

26. Claims 27-31 are rejected for the reasons cited above for claims 4-8, since they recite substantially identical subject matter.

***Claim Rejections - 35 USC § 103***

27. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

28. Claims 9, 11, 20, 24, 32, 33, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al. (US 6,498,955) in view of Yashushi et al. (US 6,084,516).

29. With regard to claim 9, while the system disclosed by McCarthy shows substantial features of the claimed invention (discussed above), it fails to disclose establishing an orientation of the first user and the second user with regards to a first device and a second device wherein the orientation is utilized to determine at least one characteristic common to users oriented with regard to at least one of the first device and the second device.

Yasushi teaches a method of establishing an orientation of the first user and the second user (residents in the room) with regards to a first device and a second device (loudspeakers) (Col 4, Line 59 to Col 5, Line 14), wherein the orientation is utilized to determine at least one characteristic (preferred volume) common to users oriented with regard to at least one of the first device and the second device. The volume of each loudspeaker is then adjusted so that each resident hears the signal easily and well-balanced. This would have been an advantageous addition to the system disclosed by McCarthy since the volume of speakers in the fitness center could be adjusted based on the proximity of people to them.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to determine an orientation of users in the system disclosed by McCarthy, and adjust the volume of the music as appropriate.

30. With regard to claim 11, while the system disclosed by McCarthy shows substantial features of the claimed invention (discussed above), including determining at least one content characteristic common to a preponderance of the additional users and the first user (member entrance triggers recalculation) (Col 22, Lines 16-21), it fails to disclose that when the first user moves from a first location in which the output content is being outputted to a second location wherein the output content is not being outputted determining if additional users are present at the second location, wherein if users are present at the second location and the first user is at the second location past a threshold time, determining the least one content characteristic common to a preponderance of the additional users and the first user.

Yasushi discloses a system where when the first user moves from a first location in which the output content is accessible to a second location wherein the output content is not accessible (resident B enters a room with resident A already in it) (Col 12, Lines 30-35) determining if additional users are present at the second location (Determine location of resident A) (Col 12, Lines 30-35). Yasushi further discloses that if users are present at the second location, the common audio source is selected and output (switch to common audio source) (Col 12, Lines 41-48).

While McCarthy fails to specifically disclose determining the common characteristics only after a threshold time since the system opted to change the music as soon as the new user is detected, McCarthy does disclose that waiting a threshold time would be an advantageous addition to the system. McCarthy discloses that a large number of users complained about the system switching stations in the middle of songs. (McCarthy, Col 26, Lines 46-50). It would have been advantageous to wait until a user has been at the second location until the end of the current song before considering their preferences to eliminate this problem

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to wait for a first user to be at a second location for a threshold period before considering their preferences along with the group of people already present at the second location. This would prevent a user from entering a room and causing the station to switch in the middle of a song because of their preferences.

31. Claims 20, 32, and 33 are rejected for the reasons cited above for claim 9, since they recite substantially identical subject matter.

32. Claims 24, and 35 are rejected for the reasons cited above for claim 11, since they recite substantially identical subject matter

33. Claims 10, 21-23, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al. (US 6,498,955) in view of Bharat et al.

34. With regard to claim 10, while the system disclosed by McCarthy shows substantial features of the claimed invention (discussed above), it fails to disclose that when the first user moves from a first location in which the output content is being outputted to a second location wherein the output content is not being outputted, determining if additional users are present at the second location, wherein if the additional users are not present at the second location, outputting the content output for the first user.

Bharat teaches a method of migrating an application from one location to another, and resuming operation where it left off. This allows a continuous experience with the application to be maintained by the user (Section 1). This would have been an advantageous addition to the system disclosed by McCarthy since it would have allowed the content being presented to a user at the first location to be resume presentation to the user at the second location, in the event that other users are not present. For example, this would allow users to finish the program they were listening to at the second location, which would be especially advantageous for talk and news type programs.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to continue presenting the content that was presented a first location when a user moves to a second location that does not have additional users. This would have allowed the user to finish receiving the content they were listening to upon reaching the second location.

35. Claims 21-23 and 34 are rejected for the reasons cited above for claim 10, since they recite substantially identical subject matter.

36. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al. (US 6,498,955) in view of Sainton et al. (US 5,854,985).

37. With regard to claim 12, while the system disclosed by McCarthy shows substantial features of the claimed invention (discussed above), it fails to disclose generating a user profile for a third user, the third user not having a user profile, wherein the user profile is generated by at least one of general demographic information of users present and based on past users encountered.

Sainton teaches generating a default user profile based on the preferences of a large number of users that have been previously encountered (Col 17, Lines 49-57). The users may then update their profile at a later time to reflect their personal preferences. This would have been an advantageous addition to the system disclosed by McCarthy since it would have given new users a default profile that corresponds substantially to the preferences of the group. Therefore, this user would not have a substantial impact on the choice of music played when he or she is present.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to generate a default user profile for a new user based on

past users encountered since it would not substantially impact the choice of music by the system until the user updated their profile with their personal preferences.

38. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over McCarthy et al. (US 6,498,955) in view of Bharat et al. in further view of Yashushi et al. (US 6,084,516).

39. With regard to claim 25, while the system disclosed by McCarthy in view of Bharat shows substantial features of the claimed invention (discussed above), it fails to disclose that a potential conflict with content output at the second location is resolved.

Yasushi discloses a system wherein when a person enters a room that contains one other person who is listening to music, the audio source is switched from the individual signal of the person already in the room to the common signal. (Col 12, Lines 30-48). This allows both people to listen to the common audio source rather than outputting both individuals preferred source.

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to switch from an individual audio source to a common audio source when a plurality of people are in the room. This prevents multiple individual sources from being played simultaneously, improving the overall listening experience for everyone.

***Conclusion***

40. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Strange whose telephone number is 571-272-3959. The examiner can normally be reached on M-F 8:30-5:00.

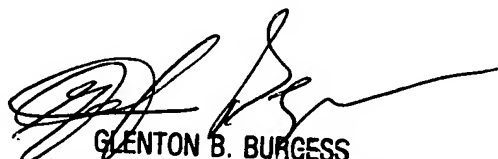
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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AS  
6/30/2005



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